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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/676,955      | 10/01/2003  | Lawrence A. Blaustein | 8778CC              | 8142             |

27752 7590 07/29/2004

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EXAMINER

SPISICH, MARK

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1744

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|  |                                      |   |  |
|--|--------------------------------------|---|--|
| <p align="center"><b>Office Action Summary</b></p> | <b>Application No.</b><br>10/676,955 | <b>Applicant(s)</b><br>BLAUSTEIN ET AL. |  |
|  | <b>Examiner</b><br>Mark Spisich      | <b>Art Unit</b><br>1744                 |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 June 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-26, 28-35, 38-40 and 42-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-22, 26, 28-30, 34, 35, 38-40 and 42-52 is/are rejected.
- 7) ☒ Claim(s) 23-25 and 31-33 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of the species of Figs 13-14 and 20 in the reply filed on 7 June 2004 is acknowledged.

***Specification***

2. The disclosure is objected to because of the following informalities: (1) the status of the prior application(s) on page 1 should be updated; (2) there is no "brief description" of fig 8A; (3) "1016" (page 8, line 27) should be -- 1116 --; (4) "1018" (page 9, line 2) should be -- 1118 --; (5) "918" (page 9, lines 27 and 31) should be -- 1218 --; (6) "918" (page 10, lines 10, 18 and 23) should be -- 1318 --; (7) "1522" (page 11, lines 11, 22, 23 and 30) is incorrect; (8) "1510" (page 11, line 22) is incorrect; (9) "918" (page 13, line 25) should be -- 1818 --; and (10) "918" (page 14, line 16) should be -- 1918 --.

Appropriate correction is required.

***Suggestions Re claims***

Although the below may not rise to the level of indefiniteness, the following changes are suggested:

- (1) "a top" (claim 8, line 2) to -- said top --; (2) "electric toothbrush" (claim 21, line 2) to -- handle; and (3) insert -- the handle of -- after "coupled to" (claims 1, 38 and 42, line 5 of each).

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

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art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 38-40 and 46 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original specification went to great lengths to describe the different motions of the two bristle supports. Although there is an embodiment wherein the tufts are all perpendicular to the top surface of the associated bristle support, there is support for at least some of the tufts being acutely angled with respect thereto as well as including different lengths (see page 14, line 29 thru page 15, line 14 and figs 20 and 21). The original specification does not mention anything about there being distinct rows as recited in claims 38 and 46, let alone in the specific manner recited therein. As figs 20-21 show a side view, they do not clearly support a recitation of three distinct rows. Fig 8A does not support a recitation of three distinct rows. In addition, it is not seen where there is support for claim 40 (the different cross-sectional tuft areas).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 42 is rejected under 35 U.S.C. 103(a) as being unpatentable over Belaschk et al (USP 2,140,307) in view of either Lippett (USP 1,896,731) OR EP 765,642 (hereinafter '642). The patent to Belaschk discloses a head for an electric toothbrush including a handle (10) including a motor (fig 11) and a drive shaft and which head includes an elongated body detachably coupled (12) to the handle and further includes two bristle holders (31,32) including a plurality of tufts of bristles (32,33). The patent to Belaschk discloses the invention substantially as claimed with the exception of the holders including at least one tuft at an acute angle to the top surface thereof. The patent to Lippett discloses a toothbrush which includes a bristle holder (40) as well as a plurality of bristles which include numerous tufts which are acutely angled as claimed (see figs 5-6). '642 also discloses a bristle holder (6) including a plurality of tufts with at least some of them (13, see figs 2-4) angled as claimed. It would have been obvious to one of ordinary skill to have modified the brush of Belaschk as such in that it is an art-recognized equivalent bristle arrangement for an electric toothbrush.

7. Claims 1,15-19,34,35,42-45 and 47-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gocking et al (USP 5,732,433) in view of EP 765,642 and Gruber et al (USP 6,308,358). The patent to Gocking discloses a brush member (24) for attachment to an electric toothbrush including a motor within a handle and further including a drive shaft wherein the brush member further comprising an elongated body (36) defining an axis and further including a first bristle holder (38) including a first plurality of tufts (45) which first holder is adapted to oscillate (91) about an axis normal to the axis of the body and a second bristle holder (100) including a second plurality of

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tufts (109) which second holder is adapted to reciprocate (92) transverse to the body axis. The patent to Gocking discloses the invention substantially as claimed with the exception of at least one tuft on each holder being acutely angled. '642 discloses a bristle holder (6) equivalent to the first holder (38) of Gocking and which includes numerous tufts (13) which are acutely angled to a top surface thereof and Gruber discloses a bristle holder (12) which is functional similar to the second holder (100) of Gocking (i.e. it is provided for interdental cleaning; see column 3, lines 50-67). It would have been obvious to one of ordinary skill to have modified the brush of Gocking as such because the prior art suggests the tuft angling in holders of similar function/structure. With regard to the second holder, the angling suggested by Gruber would better clean the interdental spaces.

8. Claims 19-22,26,28-30,34,35,42 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 10-66704 in view of DE 4412301. '704 discloses an electric toothbrush including an elongate body (10) for attached to a handle (3) including a motor and shaft (35) and which includes first (1) and second (12) bristle holders with the second holder being able to reciprocate (see fig 10) transverse to body axis. '704 discloses the invention substantially as claimed with the exception of the angling of the tufts. '301 discloses an electric toothbrush where adjacent rows of tufts (8) are inclined in opposite directions (see figs 1-4). It would have been obvious to one of ordinary skill to have modified the brush of '704 as such so that the bristle ends would clean better in both forward and backward cleaning movements. It one were to alternate every row in

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the embodiment of fig 10, then the reciprocating second holder would include tufts extending toward and away from the handle.

9. Claims 1-8,10-15,42,43,47 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Belaschk et al (USP 2,140,307) in view of Brown, Jr. et al (US 2002/0138926). The patent to Belaschk discloses an electric toothbrush including a plurality of bristle supports each including a plurality of tufts (32,33). The patent to Belashk discloses the invention substantially as claimed with the exception of the tuft angling. '926 discloses a brush section/support (14) if the same general type as in Belaschk and further wherein numerous tufts thereof are acutely angled with respect to the top surface of the support (see figs 1,3,5 and 8). It would have been obvious to one of ordinary skill to have modified the brushes (32,33) of Belaschk as such as it is shown to be an art-recognized equivalent disk-type toothbrush head. With regard to the "oscillating", it is well known in the art to provide such a movement and that such a movement could be accomplished merely by alternately rotating the shaft (16). The fact that the support of '926 includes angled tufts around the circumference thereof would provide for tufts both toward and away from the handle (claims 2-3). '926 also provides some shorter perpendicular tufts (52) (claims 5-6). The provision of a slot in the holder that engages the shaft is a well known arrangement (see the admitted prior art) (claim 15).

***Allowable Subject Matter***

10. Claims 23-25 and 31-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Tan, Hirabayashi, Derwent 1999-182385, GB '297 and JP '231 are pertinent to the plural bristle supports and the others to the tufts angling.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (571) 272-1278. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (571) 272-1281. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Spisich  
Primary Examiner  
Art Unit 1744

MS